

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

NOTICE OF REMOVAL OF CIVIL ACTION

The United States of America, on behalf of itself and Health First Family Care Center, removes the above case for the following reasons:

1. Health First Family Care Center, Inc. (Health First) is a defendant in a small claims action now pending in Franklin District Court, New Hampshire, No. 2012-SC-144, entitled Cecily Remy v. Health First. A Merits/Mediation Hearing has been scheduled for October 18, 2012. The Small Claim Complaint and Notice of Hearing are attached as Exhibit A.

2. The action commenced against Health First in state court alleges acts or omissions by Health First purportedly entitling Plaintiff to monetary damages. This removal is brought pursuant to 42 U.S.C. § 233(c), and 28 U.S.C. § 2679(d).

3. Family First is a grantee of the U.S. Department of Health and Human Services. Pursuant to 42 U.S.C. § 233(g) and (h), the United States Department of Health and Human Services has deemed Health First and its employees who are health care practitioners, to be employees of the federal government for purposes of coverage under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671, et seq., for acts and omissions during the period of time relevant to

Plaintiff's complaint. Declaration of Meredith Torres (Torres Dec.), attached to this Notice as Exhibit B, at ¶ 5.

4. The Attorney General of the United States, by the United States Attorney for the District of New Hampshire, has certified, pursuant to 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d), that Health First was acting within the scope of its deemed employment as an employee of the United States of America for purposes of the Federal Tort Claims Act, at the time of the incidents alleged in the Small Claim Complaint. See Certification of John P. Kacavas, United States Attorney, attached as Exhibit C, at ¶ 3.

5. Both 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d)(2) provide that, upon certification by the Attorney General, any civil action or proceedings commenced in state court shall be removed without bond at any time before trial to the district court of the United States of the district and division embracing the place in which the action or proceeding is pending, and that the action or proceeding shall be deemed to be an action or proceeding against the United States under the provisions of the FTCA.

6. The above-captioned action is one which may be removed without bond to this Court pursuant to 28 U.S.C. § 2679(d) and 42 U.S.C. 233(a) to the extent Plaintiff seeks judgment for damages allegedly resulting from actions performed by Health First while acting within the scope of its deemed employment with the United States of America. Under the FTCA, 28 U.S.C. § 2679(b), this action is against the United States of America.

Therefore, this action now pending in Franklin District Court is properly removed from that court to this Court, pursuant to 42 U.S.C. § 233(d) and 28 U.S.C. § 2679(d).

/s/ T. David Plourde

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